IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.No.797 of 1999

The State of Tamilnadu
rep. by its Secretary to Government
Environment & Forests Department
Fort St. George, Chennai-9. .. Appellant

Vs

1. A.K.Raju

2. The District Forest Officer
(Dy. Conservator of Forests and
Authorised Officer)
Tamilnadu Forest Department
Erode Division, Erode.

3. The I Additional District and
Sessions Judge, Periyar District
Erode. .. Respondents
(Respondents 2 and 3 not necessary
parties and hence given up)

PRAYER: Appeal under Clause 15 of the Letters Patent Act against the order dated 25.2.1999 made in W.P.No.3648 of 1997 of His Lordship, Honourable Mr.Justice P.Sathasivam.

For Appellant : Mr.V.S.Sethuraman
Spl. Government Pleader
For 1st Respondent : Mr.Goutham

JUDGMENT

(Judgment of this Court was delivered by P.D.DINAKARAN,J.)

This appeal is directed against the order of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

learned Single Judge dated 25.2.1999 made in W.P.No.3648 of 1997.

2.1. Brief facts of the case, necessary for disposal of this appeal are as under:

The first respondent is the registered owner of Tata Benz Lorry bearing registration No.TN-38-Z-0327. On 14.9.1996 at 11.00 a.m., the forest officers intercepted the lorry near Bhavani Siriyampalayam check post and found that a quantity of 100 Kgs. of Sandalwood was being transported. A show cause notice, in compliance of Section 49-B of the Tamil Nadu Forest Act, was issued to the owner of the lorry as well as to the persons who were travelling in the lorry calling for explanation on 26.9.1996. The first respondent submitted his written explanation on 4.10.1996 denying knowledge of the alleged illicit transportation of Sandalwood. Not satisfied with the explanation offered by the first respondent, the second respondent, by proceedings dated 4.10.1996, finding that it is not enough for the owner of the vehicle to say that he had no knowledge or connivance, and that he and his agent, namely the Driver have not proved that they have taken reasonable and necessary precautions against such use of the vehicle for the alleged offence, confiscated the said lorry, sandalwood weighing 100 Kgs and other articles found in the lorry.

2.2. Even though an appeal was preferred against the said order dated 4.10.1996 before the third respondent herein, viz., the appellate authority, by order dated 25.2.1997, confirmed the order of the second respondent.

2.3. Hence, the first respondent preferred W.P.No.3648 of 1997 for issue of a writ of Certiorarified Mandamus to call for the records of the second and third respondents herein relating to their orders dated 4.10.1996 and 25.2.1997 respectively, to quash the same and to direct the respondents 2 and 3 to release the vehicle of the first respondent seized on 14.9.1996.

2.4. The Forest Department resisted the writ petition placing reliance on Sections 49-A and 49-B of the Tamilnadu Forest Act and also a judgment of a Division Bench of this Court dated 4.12.1995 made in W.A.No.1296 of 1995.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2.5. However, the learned Single Judge, placing reliance on ASSISTANT FOREST CONSERVATOR v. SHARAD RAMACHANDRA KALE, (1998) 1 SCC 48, allowed the writ petition by order dated 25.2.1999 and set aside the orders of the second and third respondents herein dated 4.10.1996 and 25.2.1997 respectively. Hence the present writ appeal by the Forest Department.

3.1. Mr.V.S.Sethuraman, learned Special Government Pleader appearing for the Forest Department brought to our notice that the ratio laid down in ASSISTANT FOREST CONSERVATOR v. SHARAD RAMACHANDRA KALE, referred supra, is not applicable to the facts and circumstances of the present case, for the reason that in the said decision, the order of confiscation was set aside as the Forest Department relied upon Section 52 of the Indian Forest Act, a reading of which would clearly reveal that no liability is fastened on the owner of the vehicle to discharge his burden.

3.2. On the other hand, Mr.V.S.Sethuraman, learned Special Government Pleader, inviting our attention to Sections 49-A and 49-B of the Tamilnadu Forest Act submits that under the provisions of the Tamilnadu Forest Act, the authorities concerned are empowered to confiscate any tools, ropes, chains, boats, vehicles and cattle used in committing such offence, vide Section 49-A(1) of the Tamilnadu Forest Act, irrespective of the fact whether or not a prosecution is instituted for the commission of such forest offence.

4. Per contra, Mr.Goutham, learned counsel for the first respondent submits that no criminal action was initiated against the first respondent, viz., the owner of the vehicle, and even though criminal action was initiated against the driver of the lorry, the same resulted in acquittal and therefore, the confiscation is bad in law inasmuch as in his representation dated 4.10.1996, the first respondent had denied knowledge of the alleged transportation of sandalwood.

5. We have given careful consideration to the submissions of both sides.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. At this juncture it is apt to extract the relevant portions of Sections 49-A and 49-B of the Tamilnadu Forest Act and Section 52 of the Indian Forest Act, which read as under:

"**Section: 49-A of the Tamilnadu Forest Act – Confiscation by forest officers in certain cases:**

(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or in any other law for the time being in force, where a forest offence is believed to have been committed in respect of any scheduled timber which is the property of the Government, the officer seizing the property under sub-section (1) of Section 41 shall, without any unreasonable delay, produce it together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an office not below the rank of an Assistant Conservator of Forests authorised by the Government in this behalf, by notification, in the Tamil Nadu Government Gazette (hereinafter referred to as the authorised officer).

(2) Where the authorised officer himself seizes under sub-section (1) of section 41, any scheduled timber which is the property of the Government or where any such property is produced before the authorised officer under sub-section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

(3)(a) Where the authorised officer after passing an order of confiscation under sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction.

(b) Where any confiscated property is sold as

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

aforesaid, the proceed thereof after deduction of the expenses of any such auction or other incidental expenses relating thereto shall, where the order of confiscation made under this section is set aside or annulled by an order under section 49-C or section 49-D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order."

"**Section: 49-B of the Tamilnadu Forest Act – Issue of show cause notice before confiscation under Section 49-A**:-

(1) No order confiscating any scheduled timber, or tools, ropes, chains, boats, vehicles or cattle shall be made under Section 49-A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it and considering his objections if any:

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if, in the opinion of the authorised officer, it is practicable to do so and considering his objections if any.

(2) Without prejudice to the provisions of sub-section (1) no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under Section 49-A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying scheduled timber without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use."

WEB COPY

"**Section:52 of the Indian Forest Act -Seizure of property liable to confiscation**:

(1) When there is reason to believe that a forest-offence has been committed in respect of any

https://hcservices.ecourts.gov.in/hcservices/

forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this sections shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior."

7.1. A bare reading of Section 52 of the Indian Forest Act referred to above and Sections 49-A and 49-B of the Tamilnadu Forest Act, shows that they are quite distinct in their parameters.

7.2. Section 49-A of the Tamil Nadu Forest Act, 1882, which was introduced by Tamil Nadu Act 44 of 1992, empowers the Authorised Forest Officer to confiscate vehicle used in the commission of forest offence and Section 49-B of the Tamilnadu Forest Act relates to the procedure to be followed. Section 49-B(1) of the Tamilnadu Forest Act envisages notice to the person from whom the vehicle has been seized and the procedure lays down issuance of notice to the registered owner of the vehicle. Section 49-B(2) of the Tamilnadu Forest Act envisages that no order of confiscation should be passed if it is proved to the satisfaction of the Authorised Officer that the vehicle was used in carrying scheduled timber without the knowledge and connivance of the owner himself, his agent, if any and the person in charge of the vehicle and further each of them had taken all reasonable and necessary precautions against such use.

7.3. A comparison of Section 52 of the Indian Forest Act and Sections 49-A and 49-B of the Tamilnadu Forest Act, makes it clear that while a burden is fastened on the owner of the vehicle to prove that he had no knowledge of using the vehicle for the impugned forest offence and also to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

prove that he, his agent, if any, and the person in charge of the vehicle have taken all reasonable and necessary precautions against such use of the vehicle for committing the alleged forest offence, no such liability is fastened on the owner of the vehicle to discharge his burden under Section 52 of the Indian Forest Act.

8. The procedures contained under Sections 49-A and 49-B of the Tamilnadu Forest Act have been construed by a Division Bench of this Court in Writ Appeal No.1296/1995 dated 4.12.1995. In the said case, the Forest Officer had passed an order of confiscation which was set aside by the Appellate Authority on the ground that at the time of commission of the offence, the owner of the vehicle was in the hospital attending to his son and was not aware of the illegal transportation of timber. After referring the provisions contained, it was observed thus :-

> "*The latter portion of the proviso places burden upon the owner of the vehicle. It is not enough for the owner of the vehicle to prove that the vehicle was used without his knowledge or connivance. He is also further required to prove that the agent or the driver under whose possession, the vehicle was being kept, had taken all reasonable and necessary precautions against such use. In the instant case, it is not in dispute that the vehicle was seized when it was transporting illegally sandalwood. In such cases the aforesaid proviso comes into operation. The burden shifts on the owner of the vehicle to prove by convincing evidence that not only he had no knowledge of or had not connived with the use of the vehicle for illegal purpose, but his agent or the person in charge of the vehicle had taken all the reasonable and necessary precautions against such use. The owner has not adduced any evidence to show that the driver of the vehicle took necessary and reasonable precautions to prevent the use of the vehicle for illegal transporting the sandalwood. The fact that the driver was in the custody of the Police, did not in any way prevent the owner to examine him and to adduce any other evidence to prove that reasonable and necessary precautions were taken by the person in charge of the vehicle. The object of the proviso is to ensure that the owner of the vehicle does not escape by merely pointing out that he had no knowledge. He*

https://hcservices.ecourts.gov.in/hcservices/

being the owner of the vehicle, it is his responsibility to ensure that not only he himself had taken care to see that the vehicle was not used for any unauthorised purpose, but also the person placed in charge of the vehicle did not use the vehicle or allowed it to be used or connived at use for such purpose. This provision of law requires to be scrupulously observed in order to prevent the smuggling of sandalwood. Therefore, we are of the view that the Prescribed Authority and the learned single Judge have not taken into consideration the true and correct scope and ambit of the proviso to Section 49-B of the Act. That being so, the order of the Prescribed Authority cannot be sustained. Consequently, the order of the single Judge has to be set aside."

9. In the instant case, the second respondent as well as the third respondent, have concurrently held that the first respondent, viz., the owner of the vehicle, had not discharged his burden to prove by convincing evidence that not only he had no knowledge of or had not connived with the use of the vehicle for illegal purpose, but his agent or the person in charge of the vehicle had also taken all the reasonable and necessary precautions against such use. The owner has not adduced any evidence to show that the driver of the vehicle took necessary and reasonable precautions to prevent the use of the vehicle for illegally transporting the sandalwood. Hence, finding it difficult to follow the decision in ASSISTANT FOREST CONSERVATOR v. SHARAD RAMACHANDRA KALE, referred surpa, and interfere with the orders of the second and third respondent dated 4.10.1996 and 25.2.1997 respectively, we allow this writ appeal and set aside the order of the learned single Judge dated 25.2.1999 made in W.P.No.3648 of 1997.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

In the result, this writ appeal is allowed. No costs.

sasi

Sd/
Asst.Registrar

/True Copy/

Sub Assistant Registrar

To:

1 The I Additional District and
Sessions Judge, Periyar District
Erode.

2.The Secretary to Government
The State of Tamilnadu
Environment & Forests Department
Fort St. George, Chennai-9.

3. The District Forest Officer
(Dy. Conservator of Forests and
Authorised Officer)
Tamilnadu Forest Department
Erode Division, Erode.

1 cc to M/S Muthumani Duraisami, Advocate, SR. 52376

1 cc to The Special Govt. Pleader(forest) SR. 52201

W.A.No.797 of 1999

CPN (CO)
kk

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/